



# UNITED STATES PATENT AND TRADEMARK OFFICE

A

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,052	07/28/2003	Sig G. Kupka	23412-08081	5974
758	7590	11/02/2005		
FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041			EXAMINER LUU, SY D	
			ART UNIT 2174	PAPER NUMBER

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/629,052

Applicant(s)

KUPKA, SIG G.

Examiner

Sy D. Luu

Art Unit

2174

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/18/05 and prior.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/18/05 & 7/28/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/22/03 & 8/20/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-44 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 10-13, 15-18, 25-27, 29-40, 42-49, and 56-60 of copending Application No. 10/629,129. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject

Art Unit: 2174

matter claimed in the instant application is fully disclosed in the provisional application 10/629,129 and is covered by the provisional application since the provisional application and the instant application are claiming common subject matter on a common on-screen zone providing two or more methods of activating a command, wherein a user can perform a first action such as a stroke/gesture within the zone to activate a command according to one method, or can perform a second action, such as clicking or pressing a button within the same zone to activate a menu including the same command.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 8, 25 and 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 8, 25 and 42 recite the limitation " the second type " in lines 2. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-51 are rejected under 35 U.S.C. 102(b) as being anticipated by Kurtenbach (US # 5,689,667).

As per claim 1, Kurtenbach teaches a computer-implemented input method for a user interface, the user interface including a zone occupying less than the entire user interface, the method comprising: responsive to a user input in the zone being stroke input, performing a command associated with the user input (figs. 3-4; col. 3, lines 35-57); and responsive to the user input in the zone being a menu activation command, displaying a menu including a plurality of commands (col. 3, lines 58-60).

As per claims 2-3, 7, 10-11, and 17, by disclosing that marking menus is a pop up menu technology that displays menu items in a circle around the cursor (col. 1, lines 35-36), and menu selection being employed in high volume production operations environment such as CAD/CAM and animation (col. 2, lines 55-57), Kurtenbach in effect teaches the following: (a) the zone being associated with and adjacent to an object, wherein performing a command comprises manipulating the object, (b) the zone comprises a portion of a window associated with an object, (c) wherein the user interface includes a plurality of zones surrounding an object, and wherein performing the command comprises performing the command on the object, (d) wherein performing the command on the object comprises changing a characteristic of the object, and (e) wherein the characteristic of the object is a size, a length, a width or a height.

It is noted that a zone, which comprises a portion of a window, such as the region encompassing "menu item 1" and covered by angle range 46 depicted by fig. 3, there is always an instant where an object of interest would be directly located under the cursor when the menu operations are initiated. Thus, such an object would be associated with, as well as could be adjacent to said zone. CAD/CAM and animation operations as disclosed by Kurtenbach are command operations that would manipulate and change characteristics of the object being operated on via the menu command selections, in which the characteristic of the object could be a size, a length, a width or a height. Kurtenbach also shows a plurality of zones surrounding such an object (fig. 3; *regions encompassing "menu item 1" through "menu item 4"*).

As per claims 4-6, Kurtenbach teaches the menu activation command to comprise pressing a button (col. 3, lines 35-57); the menu to comprise at least one command associated with stroke input, wherein the menu comprises, for each command associated with stroke input, an icon indicating the associated stroke input (col. 7, lines 49 et seq.).

As per claim 8, Kurtenbach teaches responsive to the user input in the zone being of the second type: receiving a selection of a command from the menu; and performing the selected command (col. 7, lines 57 et seq.).

As per claim 9, Kurtenbach teaches the user interface to include a plurality of zones, each zone corresponding to a type of command, and wherein the command associated with the user input and the commands in the menu belong to the type (fig. 3; col. 3, lines 35 et seq.; *regions encompassing "menu item 1" through "menu item 4"*).

As per claims 12-16, Kurtenbach teaches wherein changing the characteristic of the object comprises: responsive to the stroke input being along a first axis, changing the

Art Unit: 2174

characteristic of the object by a first increment; and responsive to the stroke input being along a second axis, changing the characteristic of the object by a second increment different from the first increment, wherein the second axis is perpendicular to the first axis, wherein one axis is vertical, and the other axis is horizontal, and wherein the menu comprises commands for changing the characteristic of the object by the first and second increment (fig. 4; col. 3, lines 41 et seq.; *e.g. stroke inputs 42 and 50; there is always an instant where stroke 50 is done in a perpendicular manner to stroke 42 depending on the path chosen by the user, in which the end results would still be the same*). Kurtenbach does not expressly shows the magnitude difference between the second and the first increments. However, it is clear that there will always be an instant where such a situation would take place and in which the end results would be the same. For example, if the user make the second stroke 52 to be half in length, a same result would still be achieved.

Claims 18-34 are similar in scope to claims 1-17 respectively, and are therefore rejected under similar rationale.

Claims 35-51 are similar in scope to claims 1-17 respectively, and are therefore rejected under similar rationale.

### ***Inquires***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sy Luu whose telephone number is (571) 272-4064. The examiner can normally be reached on Monday - Friday from 7:300 am to 4:00 pm (EST).

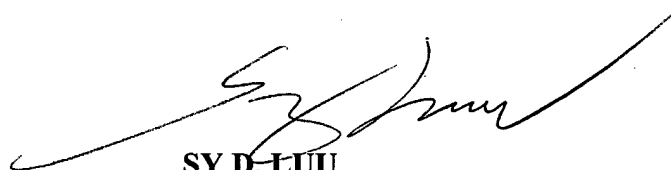
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine Kincaid, can be reached on (571) 272-4063.

Art Unit: 2174

The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**SY D. LUU**  
**PRIMARY EXAMINER**  
**ART UNIT 2174**